Supreme Court, U. S.
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APPENDIX

Supreme Court of the United States

October Term, 1974

No. 74-1287

ROBERT WEINSTEIN, et al.,

Petitioners

v.

HOWARD E. BRADFORD, et al.,

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED
April 14, 1975.

CERTIORARI GRANTED June 2, 1975

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* The Opinion of the Fourth Circuit Court of Appeals in BRADFORD v. WEINSTEIN, .. F. 2d .. (4th Cir. 1974) appears at pp. 9-25 of the printed Petition for Writ of Certiorari filed in this case on April 14, 1975.

** The Order of the Fourth Circuit Court of Appeals filed January 15, 1975, denying the Petition for Rehearing and Motion for Rehearing En Banc, appears at pp. 26-28 of the printed Petition for Writ of Certiorari filed in this case on April 14, 1975.

RELEVANT DOCKET ENTRIES

May 1, 1973 — Complaint filed in forma pauperis (only for the purpose of the record) in BRADFORD v. WEINSTEIN, Civil No. 4308 — Raleigh (E.D.N.C.)

May 1, 1973 — Order filed by Chief Judge Algernon L. Butler denying relief and dismissing the Complaint in BRADFORD v. WEINSTEIN, 357 F. Supp. 1127 (E.D.N.C. 1973)

May 14, 1973 — Howard E. Bradford filed Notice of Appeal to the Fourth Circuit Court of Appeals

September 19, 1973 — Certificate of Probable Cause filed and Professors Spritzer and Lesnick appointed to represent Bradford on appeal

February 4, 1974 — Oral arguments heard in the United States Court of Appeals for the Fourth Circuit

November 22, 1974 — Opinion of the United States Court of Appeals for the Fourth Circuit filed in BRADFORD v. WEINSTEIN, ... F. 2d .... (4th Cir. 1974)

December 6, 1974 — Petition for Rehearing and Motion for Rehearing En Banc filed in the Court of Appeals for the Fourth Circuit

January 15, 1975 — Order entered by the Court of Appeals for the Fourth Circuit denying the Petition for Rehearing and Motion for Rehearing En Banc

January 23, 1975 — Notice of Appeal filed in the Court of Appeals for the Fourth Circuit

January 24, 1975 — Order entered by the United States Court of Appeals for the Fourth Circuit staying the mandate in BRADFORD v. WEINSTEIN, ... F. 2d .... (4th Cir. 1974)

April 14, 1975 — Petition for Writ of Certiorari filed in the Supreme Court of the United States in WEINSTEIN v. BRADFORD, No. 74-1287, October Term, 1974

June 2, 1975 — Petition for Writ of Certiorari granted in WEINSTEIN v. BRADFORD, No. 74-1287, October Term, 1974

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
CIVIL ACTION NO. 4308

HOWARD E. BRADFORD and ROBERT E. HARRIS, individually and on behalf of all others similarly situated,
Plaintiffs
-V-
ROBERT WEINSTEIN, JOHN H. BAKER, JR. and WILEY EARP, individually and in their official capacities as members of the NORTH CAROLINA BOARD OF PAROLES, BEN L. BAKER, individually and in his official capacity as SUPERVISOR OF COMBINED RECORDS, V. L. BOUNDS, individually and in his official capacity as COMMISSIONER OF CORRECTION of the STATE OF NORTH CAROLINA; their agents, employees, and successors in interest,
Defendants.

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS, FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION

1. This is a civil action brought by plaintiffs on behalf of themselves and all others similarly situated under Section 1343 of Title 28 of the United States Code, to redress the deprivation of rights, privileges and immunities secured to them by the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States. Pursuant to 42 U.S.C. Sections 1983 and 1988 and 28 U.S.C. Sections 2201 and 2202, plaintiffs seek declaratory and injunctive relief to remedy the unconstitutional conduct of defendants complained of herein.

NATURE OF THE CASE

2.a. Plaintiffs and their classes are inmates in the North Carolina Department of Correction. They challenge the hearing procedures whereby defendants, members of the North Carolina Board of Paroles and the Department of Correction, grant, deny, or rescind parole, conditional release, fix and refix parole eligibility dates, and whereby they purport to adjudicate infractions of prison rules. Because these decisions involve fundamental rights of liberty and result in grievous loss for thousands of North Carolina prisoners by depriving them of that liberty, the process of making these decisions must meet the due process requirements of the Fourteenth Amendment.

b. The decisional law of the Federal Court System governing state prison inmate rights forbids these decisions to be made in an arbitrary manner or in the absence of "good cause". Therefore the Board of Paroles and the Department of Correction, pursuant to State Constitutional and statutory grants of power, have established hearing procedures at which hearings these decisions are made. Where, as here, such hearings are required to be held by federal decisional law, they must be fair and impartial in the constitutional sense, as is more fully described below.

c. The hearing procedures actually followed by defendant members and administrative officers of the Board of Paroles

and the Department of Correction are in fact completely lacking in both procedural and substantive due process, and in rudimentary fairness or equity. Hearings held by the Board of Paroles are defective in that:

1) There is no criteria or guide lines used by the Board of Paroles to determine whether an inmate shall be given a parole hearing on his parole eligibility date or be given a substitute "review" of his record jacket;

2) Inmates who are to appear before a panel of members or representatives of the Board of Paroles or those who are given a substitute "review" of their prison jackets, are not informed as to the material the panel has before it and are absolutely prohibited from reviewing their central record jacket, upon which the Board of Paroles will in large part base its decision;

3) That before any inmate is allowed to mail legal pleadings, including Habeas Corpus, to any state or federal court, he must first permit correctional officials to photocopy the legal material under threat of punishment; that the copies are placed in the inmates' central record folder; that defendant Bounds and his correctional staff furnish written material from the central record folder of inmates who shall appear before or have their records reviewed, by panels of members or representatives of the Board of Paroles showing that the inmate in question has been a writ-writer and has made persistent use of the courts by filing legal pleadings against correctional officials or his conviction, or both and that said material is reviewed by the Board of Paroles and is often used to deny parole;

4) Inmates who are financially able to retain counsel may be represented by counsel at parole hearings, but appointment of counsel at the request of an indigent is absolutely denied;

5) Hearings average about ten minutes, although the

median time is considerably less. Decisions are made in less than five minutes, and without any extended or meaningful discussion of the case;

6) No written statements of the reasons for decisions or of the evidence relied on are provided the inmate;

7) As more fully alleged hereafter, plaintiffs allege that the Board of Paroles members have no expertise, are biased, and base their decisions on false, inaccurate, and misleading information.

d. Hearings are also conducted by the Department of Correction. These hearings purport to adjudicate infractions of prison rules. Consequent to such adjudications prisoners may be punished by transfer, assignment to administrative or punitive segregation, permanent reclassification to close or maximum security, and may suffer other loss of the restricted liberty which is available to the general prison population. Reports concerning these alleged infractions are placed in the files of plaintiffs and their class, and said material is reviewed by the Board of Paroles, and is often used to deny parole or rescind parole eligibility dates.

e. The hearing procedures employed by defendant V. L. Bounds and the Department of Correction and the Board of Paroles in their said hearings are constitutionally infirm because they are not designed to be nor are they effective to expose and develop the critical facts upon which the Department of Correction and the Board of Paroles' decisions must be made, or to apply to such facts the appropriate criteria in order to reach a rational and correct decision as a matter of law. As a direct result of these defective procedures, the decisions routinely reached by the Department of Correction and the Board of Paroles are so arbitrary, discriminatory and otherwise illegal as to violate plaintiffs' rights under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

f. The combined procedures of the Department of Correc-

tion and the Board of Paroles result not in a correctional system, but in a chaotic limbo where prisoners, including plaintiffs and their class, must spend unknowable and unlimited numbers of years of imprisonment soliciting the favor and humoring the impulse, whim, caprice, and mood of correctional staff, Board of Parole members and representatives, and parole officers. False, biased, prejudicial, and distorted allegations from inmate informers, associates on the outside, correctional staff, unqualified medical assistants, college student psuedo-psychologists and others, are accumulated in the prisoners' record folder and accorded weight impossible to measure or ascertain in the decisions of the Board of Paroles and the Department of Correction.

g. Accordingly, plaintiffs seek declaratory and injunctive relief to require that defendants henceforth afford plaintiffs and their class fundamental due process safeguards in the proceedings and hearings which determine the contents of the inmate record jackets at which the Board of Paroles fixes or refuses to fix parole eligibility dates and grants or denies parole, rescinds or revokes parole, conditional release on indeterminate sentences, and at those hearings which are conducted to review adverse determinations within the administrative channels of the Parole Board itself. The minimum due process safeguards to assure evidentiary integrity to these hearings and procedures include the right to:

1) The removal of all legal pleadings or notations of legal pleadings from inmate record jackets and that the Commissioner of Correction and employees under his control be prohibited from informing the Board of Paroles whether an inmate has pending petitions or has been a writ-writer or jailhouse lawyer in the past;

2) Receive timely notice of all alleged violations of parole, conditional release or infractions of prison rules which may lead to the denying of indeterminate sentence determination or parole, or the rescinding of parole;

3) Conduct a timely review of the entire inmate record folder and all other documents which will be available to the Board of Paroles or Department of Correction in reaching their decisions;

4) Adduce favorable evidence and cross-examine adverse witnesses and persons submitting adverse reports at disciplinary hearings and at parole board hearings;

5) Be represented by appointed counsel at the hearings conducted by the Board of Paroles;

6) Be heard by an impartial and unbiased panel or official who has had no connection with any of the alleged violations or other operative facts, including the prisoners' original conviction or earlier revocations, upon which the Board of Paroles' decision will turn. In this connection, a procedure is required, and must be evolved, which furnishes the name of the Parole Board representatives or members who are scheduled to hear whatever type of hearing is pending in sufficient time to permit the prisoner to exercise an option to disqualify a representative or member for previous involvements with the prisoners' case, or for personal bias or prejudice from previous relationships with said representative or member;

7) Be represented in person or by counsel at any additional appellate or administrative review proceedings conducted by the Parole Board with due process procedures appropriate to a reviewing agency.

PARTIES

3. Plaintiff Howard E. Bradford, is a prisoner in the custody of the Department of Correction of The State of North Carolina presently confined at the Caledonia Correctional Institution at Tillery, North Carolina. Plaintiff Robert E. Harris is a prisoner in the custody of the Department of Correction of the

State of North Carolina presently confined at the Caledonia Correctional Institution at Tillery, North Carolina.

4. Plaintiffs bring this action as a class action, individually and on behalf of all others similarly situated. The class is defined as follows: all inmates in the custody of the Department of Correction, whether they have been considered for parole, paroled or not, who shall at a future date appear before the Board of Paroles or have their records reviewed for purposes of determining whether the Parole Board will grant or deny them parole pursuant to the procedures complained of herein. The class is represented by the named plaintiffs herein.

Plaintiffs bring this action on their own behalf and pursuant to Rule 23 (b) (1) and Rule 23 (b) (2) of the Federal Rules of Civil Procedure, on behalf of approximately 10,000 other inmates of the North Carolina Department of Correction, including all inmates of Women's Prison at Raleigh, subject to defendants' jurisdiction and affected by the policies, practices or acts of defendants complained of herein. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiffs herein are typical of the claims of the class, and plaintiffs will fairly and adequately protect the interest of the other members of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members thereof which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and, the parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

5. Defendants Robert Weinstein, John H. Baker, Jr., and Wiley Earp are members of the Board of Paroles. In such capacity said defendants are responsible for designing and

carrying out constitutional, lawful and fair procedures to determine, inter alia, whether or not to:

a. grant parole to an inmate;

b. rescind an earlier decision to grant parole to an inmate;

c. revoke an inmate's parole;

d. review said proceedings and determinations upon request of an adversely affected inmate.

On information and belief defendant Ben L. Baker, Supervisor of Combined Records is responsible for the implementation of the responsibilities of the defendant members as hereinafter described. Defendant Baker has in fact assisted in making policy, designing procedures, making de facto determinations critical to the decisions made by the Parole Board, and in interpreting the laws under which the Parole Board operates to deny plaintiffs and their classes fundamental fairness and due process of law. Defendant Baker is the chief staff officer and handles all administrative functions as delegated and determined by the Parole Board. He is the official keeper of the Parole Board's records and liaison officer with defendant V. L. Bounds and the staff of the Department of Correction.

6. Defendant V. L. Bounds is the Commissioner of the Department of Correction and in such capacity is responsible for the overall operation of the Department of Correction, the promulgation and enforcement of rules governing the confinement of inmates subject to the custody of the Department of Correction, including the proceedings had on disciplinary charges, and the keeping of inmate record folders relied on by the Board of Paroles in making the determinations described in paragraph 5, supra, and the safety of each such inmate.

7. Defendants are sued both individually and in their official capacities. In depriving plaintiffs of their constitutional rights, as set forth hereinafter, defendants and each of them have acted and refused to act under color of the statutes, customs and usages of the State of North Carolina.

FACTS

8.a. In December, 1970 plaintiff Howard E. Bradford was considered for parole without appointed counsel or a parole hearing. His parole plan was based upon his working with Petroleum Tank Services, Inc., of Charlotte, North Carolina. Exhibits A and B attached hereto and made a part hereof. Notwithstanding the above, the Board of Paroles arbitrarily denied plaintiff parole. Exhibit C attached hereto and made a part hereof.

b. On or about March 20, 1972 plaintiff again was considered without appointed counsel or a parole hearing, for parole. On this occasion the Board of Paroles arbitrarily refused to parole him.

c. On or about September 20, 1972 plaintiff again was considered for parole without appointed counsel or a parole hearing. The Parole Board arbitrarily refused to parole him.

d. At each of the foregoing "reviews" conducted by the Board of Paroles without plaintiff's presence, the defendant parole members acted upon information which was false, and which required sophisticated assessment and consideration of plaintiff's case. The Board of Paroles denied plaintiff parole without good cause. Exhibit E attached hereto and made a part hereof.

9. In February, 1973 plaintiff Robert E. Harris was considered for parole without a parole hearing or appointment of counsel. His parole plan was based upon his working with Nello L. Teer Company of Durham, North Carolina, at $1.90 an hour, with a 55 hour work week. The Board of Paroles arbitrarily denied parole in his case notwithstanding that he is a first offender, has been in honor grade status for ten months with an overall spotless prison record. Plaintiff Harris was not permitted to know the information upon which the Board of Paroles based their decision. Exhibits 1 and 2 attached hereto and made a part hereof. Plaintiff was not permitted to rebut the "previous record" referred to by defendants' agent in exhibit 1. He was not permitted to present any evidence in his behalf. The Board of Paroles denied plaintiff parole without good cause.

10. Plaintiffs are informed and believe and therefore allege, in addition to the allegations of paragraph 2 incorporated herein by reference, that:

a. Defendant Parole Board members, hearing representatives, and officers have no expertise in arriving at fair decisions concerning parole date rescission, parole revocation and parole release. To the contrary, said members, representatives, and administrative officers are quite unsuited for the task as a result of:

(i) The narrow partisan background which every one of them possesses and by the punitive anti-prisoner biases which they possess; and

(ii) Their experience as Parole Board members, representatives or administrative officer, which has led them to adopt rigid and stereotyped thinking patterns pursuant to which they look more for the quality of servility than for those qualities which would, in fact, portend success on parole.

b. The persons who serve as members and representatives of the Board of Paroles do not reflect a wide or representative cross-section of the population of North Carolina, but instead manifest attitudes which militate against a fair and open attitude in assessing parole readiness.

c. At the parole "review sessions" or a rare hearing, parole board members rely heavily upon written material which is unreliable, because composed of reports which (i) are often false, malicious, inaccurate or misleading, (ii) are essentially one-sided, insofar as they contain almost exclusively adverse material, without a corresponding emphasis upon the positive aspects of an inmate's prison behavior, (iii) are placed in an inmate's file through a process which contains no substantial

safeguards whatsoever to determine reliability, and (iv) may not be reviewed by the inmate who is therefore unable to refute even the most demonstrably untrue information.

d. During inmate record parole "review sessions" Parole Board members do not have sufficient time (i) to thoroughly review the relevant written material before them, (ii) to conduct a thorough and meaningful interview with the inmate in cases of personal hearings, or ((iii) to arrive at an informed decision pursuant to a discussion of the case.

e. Because of the foregoing considerations set forth in this paragraph, the decisions reached and the actions taken by Parole Board members and representatives herein complained of, are based upon (1) mere whim and caprice, reflecting primarily the Board member's personal predilections, (2) discriminatory considerations, reflecting primarily the Board member's own political, racial, and other biases and/or (3) criteria which in fact do not correspond to the likelihood of success on parole, and therefore are not based upon the "good cause" required by State law and the Federal Constitution.

f. Hearings held by the Department of Correction to adjudicate alleged rules infractions and to impose disciplinary sanctions including prolonged isolation and loss of privileges or to write and lodge reports of infractions and other incidents in the permanent inmate record files are conducted arbitrarily and capriciously. Investigation of the facts of such alleged infractions is biased and incomplete and inmates are not given an opportunity to rebut or even to see the evidence against them. When formal hearings are held at all they are conducted by partial and interested personnel. The inmate is not permitted to see his inmate record file even though items in said file are frequently used as evidence against him. These procedures are not designed to and in fact do not develop the critical facts on which administrative decisions are made and reports made.

g. State prisoners perceive Board of Parole and Department

of Correction hearings to be eminently unfair, and they share a widespread belief that the Board of Paroles and the Department of Correction consistently act in an arbitrary, discriminatory, and illegal manner; that their inmate central files, upon which the Parole Board places heavy reliance, contains much untrue and misleading information; and that the indeterminate sentence conditional release implemented through the type of "review" procedures conducted by the Dpartment of Correction, is fundamentally unfair. In fact, the type of Parole Board and Department of Correction "reviews" described herein cause grave and extensive anxiety and suffering.

h. The intended benefits of the indeterminate sentence have, in fact, been utterly perverted by the defective "reviews" conducted by the Department of Corrections, as described herein. The result is that North Carolina presently exacts some of the longest sentences in the nation, and is holding in confinement literally thousands of prisoners who should not be imprisoned by any rational criteria, thereby inflicting needless massive human suffering.

LEGAL CLAIMS

11. While acting under color of the law of the State of North Carolina, as more fully described heretofore, defendants have deprived plaintiffs and their classes of the following rights which are secured to them by the United States Constitution:

a. The right not to have parole release denied by the Parole Board in the absence of "good cause", and fundamental procedural safeguards, secured by the Due Process Clause of the Fourteenth Amendment;

b. The right not to have indeterminate sentence conditional release denied by the Department of Correction in the absence of "good cause", and fundamental procedural safeguards, secured by the Due Process Clause of the Fourteenth Amendment;

c. The right not to have parole release decisions and De-

partment of Correction release decisions made in the absence of appointed counsel in indigent cases and other fundamental procedural safeguards, secured by the Sixth and Fourteenth Amendments to the United States Constitution.

d. The right not to have disciplinary sanctions imposed for alleged violations of prison rules, or reports of said violations placed in inmate central files in the absence of a fair and impartial investigation of the facts, a hearing before an impartial tribunal whenever serious disciplinary sanctions are considered, the right to counsel whenever serious sanctions are considered, and the right to view and examine the inmate's central file, all of which rights are secured by the Fifth and Sixth Amendments and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

e. The right to be free from prolonged incarceration and isolation in the absence of any of the procedural safeguards enumerated above under conditions which shock the general conscience and are intolerable to fundamental fairness, which constitutes punishment greatly disproportionate to any offense for which they are imposed and which go beyond what is necessary to accomplish any legitimate penal aim, all secured to plaintiffs and their class under the Eighth Amendment to the Constitution of the United States.

12. An actual controversy has arisen and now exists relating to the rights and duties of the parties, in that defendants have denied and continue to deny to plaintiffs and their classes the constitutional rights set forth in paragraph 11 hereof. As a result of these violations, plaintiffs and the members of their classes have been and will continue to be irreparably injured by the aforesaid conduct of defendants unless this Court grants the declaratory and injunctive relief which they seek. Plaintiffs have no plain, adequate, or complete remedy at law to redress the unlawful acts complained of herein.

WHEREFORE, plaintiffs and their classes request that this Court:

1. Issue a declaratory judgment that the acts of defendants listed in this Complaint contravene the rights of plaintiffs and their class under the Fifth, Sixth, and Eighth Amendments and the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution:

2. Issue a preliminary and thereafter a permanent injunction requiring defendants, their agents, employees and representatives to accord plaintiffs and their classes the following rights:

A. (1) timely notice of all proceedings and hearings to perform any of the acts enumerated in subparagraph B and timely and informative notice of all charges including a statement of the charge and of the evidence to be relied upon; and an opportunity to conduct a timely review of the entire inmate central file;

(2) an opportunity to be heard, to present witnesses, and to cross-examine witnesses;

(3) the right to be represented by counsel at any hearing;

(4) the right to be heard by an unbiased panel or official and the right to challenge any panel or official for cause;

(5) the right to a verbatim transcript of any hearing and a written statement of the reasons for performing or refusing to perform the acts enumerated in subparagraph (b) and a written statement of the evidence relied on;

B. The hearings at which the guarantees enumerated above are to be accorded are:

(1) granting or denying parole, indeterminate sentence release, revoking, suspending or rescinding parole or otherwise increasing length of imprisonment;

(2) imposing serious disciplinary sanctions.

3. Certify that this action may be maintained as a class action;

4. Grant such other and further relief as to the Court seems appropriate including retaining jurisdiction in this matter.

Dated: March 2, 1973

Respectfully submitted,
Howard E. Bradford
Robert E. Harris
Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION
NO. 4308 CIVIL

HOWARD E. BRADFORD and ROBERT E. HARRIS, individually and on behalf of all others similarly situated,
Plaintiffs,
v.
ROBERT WEINSTEIN, JOHN H. BAKER, JR. and WILEY EARP, individually and in their official capacities as members of the NORTH CAROLINA BOARD OF PAROLES, BEN L. BAKER, individually and in his official capacity as SUPERVISOR OF COMBINED RECORDS, V. L. BOUNDS, individually and in his official capacity as COMMISSIONER OF CORRECTION of the STATE OF NORTH CAROLINA; their agents, employees, and successors in interest,
Defendants.

ORDER

The plaintiffs seek leave to file in forma pauperis a civil rights action under 42 U.S.C. § 1983. Both plaintiffs are state prisoners incarcerated at the Caledonia Prison Unit at Tillery, North Carolina.

The plaintiffs challenge, as being constitutionally infirm, the disciplinary procedures employed by officials of the state prisons in adjudicating infractions of prison rules, and the procedures followed by the North Carolina Board of Paroles in deciding whether or not to grant parole. Three members of the Board of Paroles are named as defendants, as well as the Commissioner of Correction and "their agents, employees, and successors in interest".

The essence of the complaint is that the challenged procedures fail to comply with the Due Process Clause of the Constitution. In regard to the procedures of the Board of Paroles, the plaintiffs allege (1) that there are no criteria for determining whether an inmate is given a parole suitability hearing or whether he is given a substitute review of his records for determining parole suitability, (2) that inmates are not informed as to the material to which the Board of Paroles has access, and are prohibited from seeing their records folders; (3) that inmates must permit prison officials to copy legal pleadings and that such copies are entered into the inmates' folders; (4) that counsel is not provided for indigent inmates at proceeding in which the granting of parole is considered; (5) that hearings of the Board of Paroles last only five or ten minutes, and that that is an insufficient time in which to adequately determine whether or not an inmate should be paroled; (6) that the Board of Paroles members have no expertise in matters of penology, and base their decisions on false, inaccurate, and misleading information. There are further allegations that the Board of Paroles is not so composed as to reflect a cross-section of the state and that the Board members have poor thinking processes. Plaintiffs also allege that the Board of Paroles relies to a great extent on written information that is placed in inmates' folders through processes with no safeguards for reliability.

As to procedures used by disciplinary boards or committees, the plaintiffs allege that records of such proceedings are placed in inmates' folders and considered by the Board of Paroles in

deciding whether to grant parole; that such procedures are biased and incomplete; and that disciplinary investigations do not develop critical facts. Plaintiffs specifically allege that an inmate is not given an opportunity to rebut or even see the evidence against him in a disciplinary proceeding.

The plaintiffs seek a declaratory judgment and injunctive relief to provide the following "rights" in all disciplinary and parole procedures: timely notice of all proceedings; an opportunity by an inmate to review his entire file; an opportunity to be heard, to present witnesses, and to cross-examine adverse witnesses; the right to be heard by an impartial panel and to challenge any panel member for cause; a verbatim transcript of any proceeding and a statement of the evidence relied upon in reaching a decision; and the right to be represented by counsel, and to have counsel appointed if the inmate is indigent. In addition to these alleged rights, the plaintiffs assert that copies of all legal pleadings should be removed from inmates' files and not disclosed to the Board of Paroles.

The plaintiff Bradford alleges that he has been considered for parole on three occasions, in December of 1970, on March 10, 1972, and on September 20, 1972, and that parole was denied on all three occasions. He alleges that he was denied parole without being present at the proceedings before the Board of Paroles, and without the benefit of a hearing or representation by counsel, and that each denial of parole was arbitrary and without "good cause."

The plaintiff Harris alleges that he was considered for parole in February of 1973 and that he was similarly denied parole arbitrarily and without "good cause." Neither of the plaintiffs states the crime of which he was convicted or the length of the term of imprisonment imposed upon his conviction.

The plaintiffs seek leave to file this action not only on behalf of themselves, but also as a class action pursuant to Rule 23(b) (1) and (2), Federal Rules Civil Procedure, on behalf of all other inmates in the North Carolina prison system, in-

cluding the inmates at the Women's Prison in Raleigh.

Rule 23(a) provides that suits may be maintained as class actions only if the following requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable,

(2) there are questions of law or fact common to the class,

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and

(4) the representative parties will fairly and adequately protect the interests of the class.

The plaintiffs do not seek to file the action pursuant to Rule 23(b) (3), which would require notice to all prospective members of the class and which would allow each prospective member to request that he or she be excluded from the class.

Parole and discipline are matters which are considered on an individual basis. It does not appear that the claims of the two plaintiffs present "questions of law or fact" in regard to parole and prison discipline, that are common to the 10,000 inmates in the North Carolina prison system. Further, it does not appear that the claims of the plaintiffs are typical of the claims of the class they seek to represent. Given the possibility of divergent interests among the thousands of inmates, it does not appear that the plaintiffs would "fairly and adequately protect the interests of the class." Further, there is a total lack of specificity as to all other inmates. No factual situation pertaining to another inmate is presented in the complaint. In Heckart v. Pate, 52 F.R.D. 224, 227 (N.D.Ill., 1971) an Illinois prison inmate sought to file a civil rights action on behalf of all prison inmates in Illinois as a class. The court said:

> "It is inconceivable that all inmates, or a sufficient number of them to constitute this cause as a class action, have the same interests and share common questions of law or facts . . . .

> An individual prisoner may have individual grievances and may raise questions of his own particular treatment as being violative of his constitutional rights but each case is personal and dependent on particular facts."

It is the opinion of this court that this action cannot be properly maintained as a class action. The court will consider the complaint as it relates to the claims of the named plaintiffs.

The complaint contains broad attacks on procedures followed by the North Carolina Board of Paroles and by prison officials in disciplinary proceedings. The functions of the Board of Paroles are entirely different than those of disciplinary boards, and therefore the allegations concerning each will be dealt with separately.

It is the function of the Board of Paroles to decide whether an inmate should be conditionally released before the expiration of his prison sentence. North Carolina General Statute § 148-60 reads as follows:

> "The time of releasing each prisoner eligible for consideration for parole as provided for herein shall be discretionary, and due consideration shall be given to the reasonable probability that the prisoner will live and remain in liberty without violating the law; that the release of the prisoner is not incompatible with the welfare of society, and that the record of the prisoner during his confinement established that the prisoner is obedient to prison rules and regulations, and has shown the proper respect for prison officials, and due regard and consideration for his fellow prisoners; and that the prisoner harbors no resentment against society or the judge, prosecuting attorneys, or jury that convicted the prisoner."

The Board must weigh all possible benefits of parole as against the possible risks in releasing to society a person who has proved unwilling to obey the law and comport with acceptable social standards. It is often a difficult decision and must be

based on many factors. The granting of parole is a function which necessarily is a matter that must be left to the discretion of parole officials. Menechino v. Oswald, 430 F. 2d 403, 408 (2d Cir. 1970) and Dorado v. Kerr, 454 F. 2d 892, 897 (9th Cir., 1972), cert. denied, 93 S.Ct. 244 (1972).

The plaintiffs challenge the processes of the Board of Paroles as failing to comply with the Due Process Clause. The court is aware of the recent decision of the United States Supreme Court in Morrisey v. Brewer, 92 S.Ct. 2593 (1972), in which the court specifies the due process rights to be accorded a parolee in a parole revocation proceeding. However, this court is of the opinion that a parole revocation proceeding differs from a review by a parole board to determine whether an inmate should be paroled initially. In the former proceeding, the determination is whether the conditional freedom of the parolee should be terminated because of an alleged violation of the conditions of his parole. In a review to decide whether parole should be granted, the determination is whether an inmate is a suitable prospect for return to society.

This court is of the opinion that the Due Process Clause does not apply in procedures designed to determine suitability for parole. See, Menechino v. Oswald, 430 F. 2d 403 (2d Cir., 1970), cert. denied 91 S.Ct. 588 (1971). The inmate is not constitutionally entitled to an adversary and evidentiary hearing on his suitability for parole, nor is he entitled to rebut information in possession of the Board of Paroles which militates against his parole. Lewis v. Rockefeller, 305 F.Supp. 258, 259 (S.D.N.Y. 1969), affirmed 431 F.2d 368. Nor does an inmate have a constitutional right to examine his record or parole board files. Tarlton v. United States, 430 F.2d 1351, 1352 (5th Cir., 1970); Ott v. Ciccone, 326 F.Supp. 609, 612 (W.D.Mo., 1970). Nor is an inmate constitutionally entitled to representation by counsel before the Board when it reviews an inmate's case to determine his suitability for parole. Buchanan v. Clark, 446 F.2d 1379 (5th Cir., 1971), cert. denied, 92 S.Ct. 347 (1971). It was held in Schawartzberg v. United States Board

of Parole, 399 F.2d 297 (10th Cir., 1968) that a prison regulation prohibiting representation by counsel at a parole review was not unconstitutional. An inmate has no constitutional right to have the Board of Paroles specify the reasons for which parole has been denied. Lewis v. Rockefeller, *supra*, and Madden v. New Jersey State Parole Board, 438 F.2d 1189 (3rd Cir., 1971).

The plaintiffs' complaint that copies of an inmate's legal pleadings are placed in his prison file, and thus are available for review by the Board of Paroles, is without merit. Such pleadings are filed with the court and are matters of public record.

Plaintiffs' allegations that the Board of Paroles does not spend sufficient time in considering parole eligibility and that the Board members are incompetent do not raise issues that are proper matters for review by this court.

Nor is there merit in plaintiffs' allegation that the Board does not reflect a fair cross section of the state. The Board is not a jury. An inmate has no right to challenge the participation of a member of the Board who is reviewing his suitability for parole. Plaintiffs allege that much information relied upon by the Board of Paroles is false and misleading. It is not a proper function of the federal judiciary to review the credibility of reports and information received by a state parole board and used in making its determinations. Tarlton v. Clark, 441 F.2d 384, 385 (5th Cir., 1971) cert. denied, 91 S.Ct. 2263 (1971); Brest v. Ciccone, 371 F.2d 981, 982 (8th Cir., 1967).

A final factor which must be given consideration is the burden that would be placed upon the North Carolina Board of Paroles by a holding that due process requirements are constitutionally demanded during parole suitability deliberations. *See*, Menechino v. Oswald, 430 F.2d 403, 409 (2nd Cir. 1970). The administrative burden of the parole system would be enormously increased if each inmate were given a plenary hearing on his suitability for parole. Further burdens would ensue

with requirements of notice, procedures for the appointment of counsel and reporters, subpoenaing and cross-examination of witnesses, compensation of counsel and costs of transcripts, and the preparation of findings and conclusions by the Board. Such requirements would likely result in congested dockets before the Board of Paroles and result in undue delay in reviewing the individual cases of 10,000 prisoners in the system as each becomes eligible for parole consideration. The state is not constitutionally required to provide for the parole of prisoners, and if plaintiffs' demands were enforced, and the burden on the prison system became too great, the state might find it necessary or desirable to terminate the parole system.

This court has serious doubts about the propriety of federal judicial intervention into the matter of state parole procedures. In *Menechino v. Oswald, supra*, the court said:

> "In the last analysis the Board's determination as to whether a prisoner is a good parole risk represents an aspect of state prison discipline, not an adjudication of rights in an adversary proceeding. Ross v. Haskins, 388 F.2d 91 (6th Cir., 1968). If the federal judiciary, in the name of the Due Process Clause, undertook the supervision of such disciplinary procedures, it would become inextricably involved, upon the suits that would inevitably follow, in non-legal, non-judicial determinations for which it is not equipped by training or experience. . . . We believe that to embark upon such a course would be unwise."

This court is of the opinion that plaintiffs do not have standing to challenge the disciplinary procedures of the North Carolina prison system. It has already been held that those claims were improperly raised by the class action, and the plaintiffs individually make no allegations whatsoever that they have ever been subjected in any way to prison disciplinary sanctions, or that they are about to be subjected to such sanctions.

The complaint is without merit. Now, therefore,

It is ORDERED that the complaint be and is hereby dismissed.

It is further ORDERED for purposes of the record only, that plaintiffs be allowed to file their complaint with the clerk of this court without prepayment of the fees, costs, or security therefor.

This 30th day of April 1973.

Algernon L. Butler
CHIEF JUDGE
UNITED STATES DISTRICT COURT